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Agenda item 114 (b)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Letter dated 3 November 1993 from the Permanent Representative of Slovenia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a paper entitled "Towards the establishment of the post of the United Nations High Commissioner for Human Rights".

I should be grateful if you would have the present letter and the paper circulated as a document of the General Assembly under agenda item 114 (b).

(Signed) Danilo TÜRK
Permanent Representative

93-61425 (E) 151193

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Annex

TOWARDS THE ESTABLISHMENT OF THE POST OF UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

I. GENERAL

1. The World Conference on Human Rights (Vienna, 14-25 June 1993) recommended to the General Assembly that, when examining the report of the World Conference at its forty-eighth session, it begin, as a matter of priority, consideration of establishing the post of High Commissioner for Human Rights for the promotion and protection of all human rights.

2. In order properly to assess the actual scope of this recommendation, it should be borne in mind that the World Conference adopted an ambitious and potentially far-reaching programme for the promotion and protection of human rights, which provides the substantive framework for the elaboration of the mandate of the High Commissioner for Human Rights. Furthermore, the Conference expressed concern over the growing disparity between the activities in the field of human rights and human, financial and other resources available to carry them out and called for an increase in the proportion of the regular budget allocated to the Centre for Human Rights. However, the Conference did not, and could not, recommend specific measures necessary to eliminate the mentioned disparity between aspirations and resources. That remains to be done by the relevant United Nations organs, including, in particular, the General Assembly.

3. The purpose of the present paper is to offer some ideas for discussion and action recommended by the World Conference. While the discussions carried out so far have clarified some issues, there is a need for further clarification of several closely related but distinct issues: the immediate improvements required in terms of the functioning of the Centre for Human Rights; the mandate of and functions to be performed by the High Commissioner; and the relationship between the Centre and the High Commissioner, including the question of how best to achieve the transition. A three-part approach might be appropriate. The first and most immediate step would be to begin to develop a more effective approach within the Centre for Human Rights to addressing the tasks defined by the World Conference. Another aspect, to be pursued in parallel, would be to develop the mandate of the High Commissioner, while the third and final step would be to establish the post and to appoint the High Commissioner. That final objective should be achieved, if possible, during the forty-eighth session of the General Assembly, but no later than 1995. The fiftieth anniversary of the United Nations should be marked, inter alia, by the capacity of the United Nations to address human rights issues in accordance with the needs of our time.

4. In addressing the general tasks identified by the World Conference and the needs concerning the work of the Centre for Human Rights, the General Assembly should, at its forty-eighth session, consider the aspects of the High Commissioner's mandate which are already within the competence of the Centre for Human Rights. It is important to agree that progress must be immediate. Real and immediate progress with respect to the functioning of the Centre for Human Rights would enable the debate on the High Commissioner to become practical, linked to actual needs, to go beyond the present stage of discussion at which

much energy is devoted to consideration of hypothetical and relatively abstract options.

II. IMPROVEMENTS NEEDED IN THE EXISTING UNITED NATIONS STRUCTURES IN HUMAN RIGHTS

5. The need for strengthening the Centre for Human Rights has been stressed in a number of statements by various United Nations organs and, most recently, by the World Conference. The Conference emphasized that the Centre should be assured adequate means for thematic and country rapporteurs, experts, working groups and treaty bodies. While the Conference did not specify the modalities of those tasks, it elaborated on the other major objective concerning the Centre for Human Rights: the enhancement of its programme of advisory services and technical assistance. It recommended expansion and better management of the existing voluntary funds as well as enhancement of transparency in the decision-making process. The World Conference also requested an increase in resources commensurate to the expanded mandates of the Centre for Human Rights.

6. One of the two major tasks that should constitute the agenda for immediate improvement within the Centre for Human Rights is to improve its facilities for dealing with the following neglected areas:

(a) Implementation of economic, social and cultural rights;

(b) Protection of the rights of women;

(c) Expanded activity related to the rights of the child;

(d) Promotion and protection of the rights of persons belonging to national, ethnic, linguistic and religious minorities.

In these areas the secretariat must be established or developed well above the present level. The expertise and facilities should also go beyond the realm of law and hitherto developed methods of work in the field of human rights. They should facilitate a meaningful dialogue with Governments and non-governmental actors with regard to a variety of policy issues and be able to draw on the existing expertise elsewhere in the United Nations system.

7. The other major task is the need for a general improvement in reporting on problems related to the realization of human rights. In this context, it should be emphasized that effective protection of human rights requires strengthening of the existing treaty-based mechanisms as well as thematic and situation-specific mechanisms established in recent years. This task includes:

(a) Elaboration of methodologies for country-specific reporting on violations of human rights (at present the quality and comprehensiveness of these reports varies);

(b) Improvement of the secretariat support to the work of treaty-based organs in the field of human rights, to the experts mandated with preparation of reports on various topics and to Charter-based organs dealing with violations of human rights;

(c) Improvement in the systems of collection and elaboration of information related to the problems in the field of the realization of human rights and the creation of a unified system of databases.

8. The improvements in the areas mentioned in the preceding two paragraphs would be necessary also from the perspective of advisory services and technical assistance to Governments needing such assistance.

9. These improvements require, inter alia, enhancement of the level and volume of expertise within the Centre for Human Rights and an appropriate level of technical-secretariat support to the work of human rights organs. The financial implications are discussed below.

III. THE HIGH COMMISSIONER FOR HUMAN RIGHTS

A. Mandate

10. The General Assembly will consider various aspects of the idea of establishing the post of the High Commissioner for Human Rights at its forty-eighth session in 1993. That debate should be linked to practical action concerning the improvement and strengthening of the Centre for Human Rights: an agreement on the mandate, the modalities of work and the position of the High Commissioner for Human Rights should be facilitated by the practical action for strengthening of the Centre for Human Rights. However, it is important that broad agreement on the mandate of the High Commissioner and on his/her position in the United Nations system be achieved at an early stage. The activities for strengthening the Centre for Human Rights and the preparations for establishing the post of the High Commissioner for Human Rights should be coordinated.

11. As emphasized above, it is important that broad agreement on the Commissioner's mandate be reached at an early stage. The main substantive elements of the mandate of the High Commissioner for Human Rights should be:

(a) Developing the Centre for Human Rights into an effective component of the United Nations system capable of responding to the growing needs in the field of human rights and of providing the necessary information and expertise for implementation of other aspects of the High Commissioner's mandate;

(b) Promotion of system-wide coordination of United Nations action in the field of human rights. The concept of indivisibility and interdependence of human rights, universally endorsed at the World Conference on Human Rights, has to be developed at the level of practical action by a variety of United Nations organs and agencies. In particular, it will be necessary to put greater emphasis on the tasks concerning realization of economic, social and cultural rights and on policies designed to improve the situation of women, children and other vulnerable individuals and groups;

(c) Preparation of an annual report on the situation of human rights indicating the main problems in the field and the possible remedies. The report would focus not on country-specific situations but rather on the major types of human rights problems, including those arising from the violation of human rights, in various parts of the world. The report would assist the relevant

United Nations organs to develop appropriate responses to phenomena requiring action within the United Nations system;

(d) Immediate response to emergency situations urgently requiring information and action. The Commissioner would be empowered to bring any situation characterized by massive violations of human rights to the attention of the appropriate organ in the field of human rights and to propose necessary action. He/she should also have access, through the Secretary-General and in accordance with the Charter to the General Assembly and the Security Council;

(e) Fact-finding and good offices: the High Commissioner should be expected to pursue, under the authority of the Secretary-General and within his terms of reference in the field of preventive diplomacy, fact-finding missions and good missions of offices to Governments and any other concerned parties;

(f) Preparation and implementation of the human rights component of peace-keeping operations. The High Commissioner should be expected to prepare the background analysis, as well as specific proposals and plans, for implementation of the human rights aspects of peace-keeping operations. The decision on the necessity of that component would be taken by the Security Council, while the specifics of that part of the operation would have to be the responsibility of the High Commissioner;

(g) In the context of post-conflict peace-building activities, the High Commissioner would be expected to prepare plans for human rights activities and the realization of these plans once they are approved by the Security Council. It is understood that such plans would be prepared on a case-by-case basis;

(h) The High Commissioner would be entitled to appoint advisory teams composed of individuals and representatives of groups who could, in the opinion of the High Commissioner, provide the necessary expertise and other assistance needed in pursuit of his/her task;

(i) The High Commissioner would be expected to work in a public, transparent manner. His/her action would be under permanent public scrutiny, although confidential methods of work would be permitted on a temporary basis and strictly when needed for a given task.

B. Appointment

12. The High Commissioner should be a person of proven experience and expertise in the field of human rights, a person who has already achieved practical results in the field. Furthermore, he/she must be a person of the highest moral standing and proven independence, impartiality and objectivity.

13. The High Commissioner would be appointed for a period of seven years without the possibility of reappointment.

IV. RESOURCES

14. The Centre for Human Rights is the focal point for the human rights activities of the United Nations, and is the primary organizational unit within the Secretariat for the implementation of human rights programmes. The World Conference requested the Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for human rights programmes within the existing and future regular budgets of the United Nations and to take urgent steps to seek increased extrabudgetary resources. It also requested that an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights and that sufficient human, financial and other resources be provided to the Centre. The current discussions concerning the establishment of the post of High Commissioner for Human Rights make these requests even more relevant. Improvement in resources of the Centre for Human Rights is an important part of strengthening the infrastructure needed for the High Commissioner's work.

15. Concern with the protection and promotion of human rights world wide has already led to a significant expansion of the activities and mandates entrusted to the Centre for Human Rights. In order to respond effectively to new challenges, a new organizational structure has recently been approved by the Secretary-General. The proposed structure takes into account the expanded activities and mandates of the Centre. As a result, an increase of financial resources is proposed under Section 21 (Human rights) of the regular budget for the biennium 1994-1995. The Fifth Committee and the General Assembly should favourably consider the proposed increase and approve it during its forty-eighth session. As for future budgets, financial resources for activities related to the High Commissioner for Human Rights and the Centre should be increased commensurate with their increased mandates, requirements and activities of the Commissioner and the Centre.

16. Under the circumstances of zero growth of the United Nations regular budget in real terms, a net increase of resources for human rights activities in the future regular budgets can be achieved through redeployment of resources from other sections and programmes that may have become obsolete or will have a reduced level of financial requirements compared to the past, subject to appropriate decisions by the Fifth Committee and the General Assembly. The importance and desirability of extrabudgetary resources and voluntary funding notwithstanding, it is vital to ensure, within the regular budget, a sufficient level of resources to guarantee the long-term financial stability of the Centre and the Office of the High Commissioner.

17. Extrabudgetary resources, through voluntary contributions to existing and future trust funds, are envisaged to play an increasingly important role in the funding of United Nations human rights activities and programmes. The World Conference called for generous contributions to this effect. Member States should be encouraged to increase the level of their voluntary contributions at an early stage of the United Nations budget cycle, thus facilitating budgetary projections for United Nations human rights activities.

V. CONCLUSION

18. The General Assembly has, at its forty-eighth session, two important tasks:

(a) Meaningful improvement of the situation of the Centre for Human Rights and consequently of activities supported by the Centre. To deal successfully with this task will require immediate decisions concerning increased resources in the manner suggested above and, if pursued successfully, it will render the necessary level of credibility to all other discussions concerning the enhancement of United Nations action in the field of human rights;

(b) The discussion on establishing the post of the United Nations High Commissioner for Human Rights should proceed hand-in-hand with the above process. A realistic expectation of success at the forty-eighth session of the General Assembly would include - at least - a decision on the establishment of the post of the High Commissioner for Human Rights and broad agreement on the basic elements of his/her mandate.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 9 November 1993 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the appeal of the Ministry of Education and Culture of the Federal Republic of Yugoslavia to the international and Yugoslav public for the protection of the Jasenovać Memorial.

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly under agenda item 114 (c).

(Signed) Dragomir DJOKIĆ
Charge d'affaires a.i.

Annex

APPEAL TO THE INTERNATIONAL AND YUGOSLAV PUBLIC FOR THE PROTECTION OF JASENOVAĆ

The Ministry for Education and Culture of the Federal Republic of Yugoslavia considers it a cultural and civilizational obligation to draw the attention of the international and Yugoslav public to the inhumanity and inappropriateness of the proposal of Croatia's President Tudjman to transform the Jasenovać Memorial, an area in which the independent State of Croatia established in the Second World War one of the most dreadful concentration camps in Europe, into a general memorial centre dedicated to all Croatian victims from the Second World War. Even the Nazi authorities, themselves the creators of the most cruel places of torture in the history of mankind (Dachau, Auschwitz, etc.) were horrified by the atrocities committed in this concentration camp.

In Jasenovać, the notorious Ustashi authorities and the army of the then Croatian State executed nearly 700,000 people in the most cruel way, the majority of them (over 600,000) being Serbs, inhabitants of their "independent State", as well as tens of thousands of Jews, Gypsies and Croat anti-Fascists.

Franjo Tudjman has presented this idea and proposal several times since he became the leader of the so-called democratic Croatia: he announced it publicly for the first time at the Peace Conference on Yugoslavia in The Hague on 5 November 1991, then at the celebration of the fiftieth anniversary of the Second World War in Zagreb in April 1991 and, finally, at the two-day session of his party, the Croatian Democratic Community (HDZ) in October 1993, promoting it as one of the most important projects of his party and personal policy.

In this way, President Tudjman and his party have again proved their extreme nationalism and their return to the Fascist methods of State set-up.

This is not only an attempt to cover up and minimize the atrocities of the former Croatian State, whose past Tudjman, the historian, negates and recasts in his works and public speeches, reducing the number of victims in this camp to "only 20,000 to 30,000". What worries and insults us much more is the idea and intention to bury the murderers together with the innocent victims of the terror in Jasenovać. This would not only insult and desecrate Serb and Yugoslav graves and holy places, but also falsify world history as a whole.

Therefore, the Federal Ministry of Culture and Education addresses this appeal to all organizations and people in the world committed to the loftiest human ideals, democratic values of society and scientific and historical truth, to condemn and prevent the realization of this idea, which is nothing but an attempt to falsify history, under the pretext of pacifying the conflicts from the Second World War.

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ADVANCEMENT OF WOMEN

United Nations International Research and Training Institute for the Advancement of Women and the United Nations Development Fund for Women

Note by the Secretariat

1. The purpose of the present note is to provide clarifications with respect to a number of issues raised in the position paper on "Proposal for the INSTRAW/UNIFEM merger" submitted by the Government of the Dominican Republic (A/C.3/48/6, annex).

2. With regard to paragraphs 4 and 5 of the position paper, the Secretary-General welcomed the recommendation of the Board of Trustees of INSTRAW for the establishment of a Task Force to advise him on the elaboration of a proposal which he, in the exercise of his responsibilities, intended to submit to the appropriate intergovernmental bodies for their consideration and action. In the interests of cost-effectiveness, the Secretary-General considered that the Task Force should be limited in size. The selection of two representatives each from the INSTRAW Board of Trustees and the Consultative Committee of UNIFEM, and communication with their membership, was left to the discretion of the two entities, in consultation with the respective chairpersons. The report of the Task Force (E/1993/82, annex) was submitted to the Secretary-General with its unanimous endorsement.

3. With regard to the points raised in paragraphs 6 and 20, INSTRAW is a subsidiary body of the United Nations in terms of Article 7, paragraph 2, of the Charter of the United Nations. The future of the Institute is, accordingly, a matter of concern of all Member States. Ultimate decisions on the matter are the prerogative of the relevant principal organs of the Organization, taking into account all relevant factors. Consultations with the host country had properly to follow relevant intergovernmental deliberations, as represented by the consideration of the Secretary-General's report (E/1993/82) at the

substantive session of the Economic and Social Council of 1993, at which the Dominican Republic was represented by an observer, and relevant intergovernmental action in Council decision 1993/235.

4. Following the adoption by the Council of decision 1993/235 on 27 July 1993, and a first review by the Secretariat, during the month of September, of the administrative, financial and legal implications, as requested by the Council in the decision, the Secretary-General wrote to the President of the Dominican Republic on 1 October 1993 seeking the cooperation of the authorities of the Dominican Republic in pursuing this matter. Subsequently, senior representatives of the Secretary-General undertook consultations with the authorities of the Dominican Republic in Santo Domingo and New York.

5. With regard to the points raised in paragraph 6 and in paragraph 21 concerning the need for a prior revision of the Headquarters Agreement, any required amendment/revision of the Agreement, rather than being a prerequisite, can properly be addressed only following the relevant intergovernmental decisions.

6. Conclusions on financial implications, as contained in paragraph 20 of the Secretary-General's report (A/48/591), are relevant to the points raised in paragraph 10 of the position paper.

7. The communication from the Office of General Services to the Director of INSTRAW of 19 May 1993, referred to in paragraph 9 of the position paper, far from prejudging the outcome of the Task Force and Council deliberations, was a response to a legitimate inquiry by the Director concerning certain aspects of the potential implications of the proposal, in preparation for her participation in the Task Force.

8. With regard to the points raised in paragraphs 12 to 14, the Economic and Social Council decision is before the General Assembly in the relevant official records. It is fully quoted in the Secretary-General's report under this item (see A/48/591, para. 3). A final decision on the proposal is indeed the prerogative of the General Assembly. No steps have been taken by the Secretariat to prejudge the General Assembly's action. On the contrary, the Secretariat has undertaken its review of administrative, financial and legal implications, as specifically requested by the Council, and has endeavoured to consult the Dominican Republic on relevant issues within the scope of that decision, pending final action by the General Assembly.

9. The points raised in paragraph 15 concerning consultations with the Government of the Dominican Republic have been addressed in paragraphs 3, 4 and 8 above. The legal implications are addressed in paragraphs 9 to 11 of the Secretary-General's report.

10. As to the points raised in paragraphs 17 and 19, the rationale for the proposed redistribution of activities between New York and Santo Domingo is set out in paragraph 7 of the Secretary-General's report. Paragraphs 13 and 14 of his report are also relevant in this regard.

11. The communication from the Director of UNIFEM to the United Nations Development Programme resident representatives, referred to in paragraph 18 of the position paper, was intended to provide a factual account, following the adoption of Economic and Social Council decision 1993/235, of the outcome of the Task Force deliberations and the Council's action thereon, in response to requests from resident representatives for information which would enable them to respond to inquiries on the matter. Responding to such inquiries is fully within the mandate of UNDP field offices, "Women and development" being one of the priority themes approved by the Governing Council.

12. The issues raised in paragraphs 22 and 23 concerning the contribution of the Dominican Republic have been fully acknowledged by the Secretary-General in his communication with the Dominican authorities at the highest level, in the Task Force and in the Secretary-General's report to the General Assembly, which stresses the importance of building on that contribution and sets out specific proposals to this effect.

13. With regard to paragraphs 24 to 26, the arrangements set out in the Secretary-General's report have been designed to maintain the comparative advantages, characteristics and distinct identities of the two entities, while serving to reinforce the linkages and commonalities of their respective programmes. They are specifically aimed at maximizing the support which the two programmes can provide to the preparation of the Fourth World Conference on Women and its follow-up. The overall intention is to contribute to the achievement of a stronger and more unified programme for the advancement of women within the United Nations as a whole. It is in this context, and in response to a specific mandate from the Economic and Social Council that the Secretary-General has prepared and submitted his report for consideration and action by the General Assembly at its current session.

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RIGHT OF PEOPLES TO SELF-DETERMINATION: RIGHT OF PEOPLES TO SELF-DETERMINATION

Letter dated 10 November 1993 from the Permanent Representative of Pakistan to the United Nations addressed to the Secretary-General

I have the honour to enclose a resolution adopted at the joint session of the Parliament of the Islamic Republic of Pakistan on 1 November 1993 on the situation in Indian-held Kashmir (see annex).

It is requested that the resolution be circulated as a document of the General Assembly under agenda item 108 (a).

(Signed) Jamsheed K. A. MARKER
Ambassador
and Permanent Representative

93-63433 (E) 181193 211193

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Annex

SUBSTANTIVE MOTION

The Majlis-e-Shoora (Parliament) of Pakistan in joint sitting,

Expressing its shock and indignation at the massive human rights abuses perpetrated on the freedom-loving people of Jammu and Kashmir by the Indian security forces and the siege and desecration of the Dargah of Hazrat Bal in Srinagar which is revered by Muslims in Jammu and Kashmir and throughout the world,

Recalling that 46 years ago in this month, the Indian forces marched into Jammu and Kashmir against the wishes of the people of the State,

Noting that over the years India has continued efforts to strengthen its stranglehold over occupied Jammu and Kashmir, and despite its solemn commitments to the Kashmiri people and the international community, the Indian Government has refused to implement the resolutions of the United Nations Security Council to enable the people of Jammu and Kashmir to exercise their right to self-determination, and

Noting with admiration the courage and determination with which the valiant people of Indian-held Jammu and Kashmir have all along resisted the Indian attempts to subdue them,

1. Expresses its complete and unflinching solidarity with the people of the Jammu and Kashmir in their heroic struggle to achieve their inalienable right to self-determination, and salutes the memory of the thousands who have laid down their lives for their just cause;

2. Assures the people of Jammu and Kashmir that the people of Pakistan will continue to extend wholehearted political, moral and diplomatic support in their struggle;

3. Expresses deep concern at the gross violation of human rights of the people of occupied Jammu and Kashmir by the Indian security forces;

4. Calls upon the Government of India to honour its commitment to the international community to allow the Kashmiri people to exercise their right of self-determination in accordance with the United Nations Security Council resolutions;

5. Calls upon India to immediately lift the siege of the Hazrat Bal Shrine to enable the Muslim people of Kashmir to exercise their fundamental right of freedom of worship and to stop forthwith indiscriminate killing of the innocent Kashmiris;

6. Calls upon India to allow free movement of the representatives of international media, human rights organizations, international relief agencies and international delegations to assess the gravity of the situation and the

magnitude of the atrocities being committed against the entire population of Jammu and Kashmir;

7. Urges the international community, the international human rights organizations and the United Nations to persuade India to stop its violations of the human rights of the Kashmiri people and to honour its commitments in regard to their right of self-determination; and

8. Calls upon the United Nations to take concrete steps for the implementation of its resolutions for the settlement of the Jammu and Kashmir dispute;

9. Reaffirms the resolve of Pakistan to seek a peaceful settlement of the Kashmir issue in accordance with the international commitments in the interest of peace and security of the South Asian region;

10. Authorizes to circulate this resolution to all parliaments and the United Nations.

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RIGHT OF PEOPLES TO SELF-DETERMINATION: RIGHT OF PEOPLES TO SELF-DETERMINATION

Letter dated 11 November 1993 from the Permanent Representative of Pakistan to the United Nations addressed to the Secretary-General

I have the honour to request that Security Council resolutions 47 (1948), 91 (1951), 122 (1957) and 126 (1957) be made available to the Third Committee for information under agenda item 108 (a) of the forty-eighth session of the General Assembly entitled "Right of peoples to self-determination".

(Signed) Jamsheed K. A. MARKER
Ambassador
Permanent Representative

93-63439 (E) 181193 211193

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 5 November 1993 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit, enclosed herewith, the information prepared by the Ministry for Human and Minority Rights of the Federal Republic of Yugoslavia on the violation of human rights and liberties of the Serbs in the Republic of Croatia as a result of the implementation of the Constitution of the Republic of Croatia or of its infraction.

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under agenda item 114 (c).

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

Annex

VIOLATION OF THE HUMAN RIGHTS AND FREEDOMS OF SERBS IN THE REPUBLIC OF CROATIA AS A RESULT OF THE IMPLEMENTATION OR INFRINGEMENT OF THE CONSTITUTION OF THE REPUBLIC OF CROATIA

1. The Constitution of the Republic of Croatia, which was adopted in 1990 and was accompanied by a euphoric campaign to reduce the size of the Serbian national body in Croatia, is the instrument which first introduced discrimination against Serbs in Croatia. Pursuant to this instrument, Croatia is established as the national State of the Croatian people and the State of other peoples and minorities who are citizens of Croatia. This includes the Serbs. This Constitution represents a major turning-point compared with the constitutional, de jure and de facto situation (under the Constitution of Croatia of 1974) which had prevailed earlier, when Croatia was defined as the national State of Croats and the national State of Serbs living in Croatia and of national minorities living there.

Having lost the equality with the Croatian people before the law and in political matters which they had been guaranteed by the Constitution in their common homeland, the Serbian people have virtually become a national minority. The implementation of the sole supreme legal instrument of the State of Croatia thus has set in motion a process that has undermined the rights of, and discriminated against, Serbs in Croatia.

2. The Constitution of the Republic of Croatia and the resulting constitutional legal system stunningly illustrate the enormous gulf between the rules of law and their implementation in practice. Although the Constitution of the Republic of Croatia was modelled on contemporary democratic systems and establishes a set of civil, political and other rights in keeping with the noblest standards, where respect for the rights of Serbs in Croatia is concerned (and on other matters as well) the Constitution hardly has served to prevent the endangerment and violation of fundamental human rights and freedoms, namely: the right to life, the prohibition against torture and other degrading treatment and the prohibition against extrajudicial executions. The violation of these human rights has resulted in the almost total, systematic ethnic cleansing of Serbs in Croatia, as illustrated by information in the report by Mr. Boutros Boutros-Ghali, the Secretary-General of the United Nations, to the Security Council on 15 May 1993 indicating that more than 250,000 Serbs have been expelled. Our own information indicates that more than 300,000 Serbs have been expelled. In other words, with the exception of the Republic of Serbian Krajina and a small enclave in Gorski Kotar, there are no more Serbs in the Republic of Croatia.

For example, a new charge introduced in Croatian penal legislation (Narodne Novine, No. 74/92) calling for the punishment of "any act the aim of which is to expel persons or prevent the return of expelled persons" would seem, at the very least, to have been displaced.

In addition to the rights discussed above, other rights guaranteed by the Constitution also have been brutally violated, in particular the right to equality before the law, more specifically, the fundamental guideline contained

in article 1, paragraph 2, of the Constitution of the Republic of Croatia stipulating that "power emanates from and belongs to the people as a community of free citizens enjoying equal rights". The violation of this right is illustrated in particular by the manner in which Croatian citizenship is granted (the famous so-called "domovnica" document). The Law on Citizenship of the Republic of Croatia (article 26) expressly stipulates that the legal authority, i.e., the Ministry of the Interior, has the right, at its discretion, to deny citizens the right to Croatian citizenship without any obligation to state the reasons for the denial. Since it is citizenship that confers entitlement to a long list of other rights, starting with civil and political rights (the right to vote), and ranging from property rights and rights of succession to rights relating to employment, including the right to social security and to retirement and disability benefits and the like, this procedure has forced several thousand Serbs in Croatia to leave their homes, which is a less brutal but equally effective form of ethnic cleansing.

Similarly, the right to equality before the law is not applied consistently with respect to the implementation of the Law on Amnesty for the offence of armed revolt envisaged in article 236 (f) of the Criminal Code of Croatia; according to official information from the Croatian authorities, criminal proceedings have been instituted under that Law against 20,000 Serbs in Croatia (our estimates indicate that the number is much higher). The law confers on the public prosecutor the discretionary power to keep a case open on the basis of very imprecise criteria relating to the "war crime" concept, and this power has been used very widely, with the result that the very people for whom the amnesty was intended have been unable to benefit from it. This is a typical example of the abuse of penal legislation and of justice in general.

The right to freedom of conscience and freedom of religion and the right to practice religion freely and openly have assumed singularly treacherous forms in Croatia. For example, the insistence on the idea of establishing a Croatian Orthodox Church is one furtive method that is being used to carry out the ethnic cleansing of Serbs in Croatia. During the war in Croatia in 1991 and 1992, 97 Orthodox Churches were demolished and destroyed.

3. Other rights guaranteed by the Constitution also are being violated in the Republic of Croatia, and the violations affect all citizens, the most vulnerable of whom are those categories of citizens who are non-Croats. Examples include loyalty oaths, dismissal notices (see appendix) and the attitude of society towards people who think differently (as illustrated by the publication, distribution, public announcement and even public sale of lists of Serbian intellectuals, artists, cultural celebrities and others whose views are different, which makes them vulnerable to a whole host of problems) and, in particular, towards persons of a different nationality, and even schoolchildren. The freedoms of speech, assembly and the press are the freedoms most seriously threatened for all citizens in Croatia.

The situation affecting freedoms in Croatia is illustrated by the fact that the Criminal Code of the Republic of Croatia, adopted in 1990, stipulates that, in cases involving the offence of disseminating false information (article 197, paragraph 2, dealing with serious violations), the penalty may be up to 10 years in prison, a typical example of a situation in which expressing one's opinion is considered an offence.

4. Despite the efforts of the authorities of the Republic of Croatia formally to supplement its legal and constitutional system with respect to guarantees of human rights, in particular with regard to the status of nationals of other communities and minorities in Croatia (the Charter of the Rights of Serbs and other Nationalities in the Republic of Croatia, the Constitutional Law on the Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities) and to create for itself the image of a State governed by the rule of law which applies the noble standards of democratic rights, and bearing in mind the many ways in which human rights are violated in Croatia, one might well ask whether people belonging to another ethnic group and, in general, citizens with other political and religious convictions, can be assured of protection under a system for the guarantee of human rights of the kind devised and implemented in Croatia.

Appendix

REPUBLIC OF CROATIA
Commune of Vinkovci
Communal Secretariat for Administrative Affairs

Vinkovci, 27 May 1991

Pursuant to article 377, paragraph 2, of the Law on Administration (LO RC No. 16/78, 50/78, 29/85, 48/85, 17/86, 41/90 and 47/90) and to the Conclusion of the Executive Council of the Assembly of the commune of Vinkovci, class 023-01/91-01/02, Ref. No. 2188-10-01/91-1 dated 14 May 1991, I hereby issue this

DECISION

terminating the employment of DUSAN JOVANOVIC, Director of the local Office of Sremske Laze, effective 31 May 1991.

EXPLANATION

The Executive Council, by its Conclusion dated 14 May 1991, instructed officials in charge of communal administrative bodies to issue decisions terminating the employment of all employees who have not signed the oath recognizing the Republic of Croatia.

Employee Dusan Jovanovic has refused to sign the oath of loyalty to the Republic of Croatia and, since he is not only an administrative official of the Republic of Croatia, but also the Director of the local Office, a position to which he can be appointed only with the approval of the Executive Council, the decision contained in the operative paragraph has been issued.

This decision may be appealed to the Secretary of the Communal Secretariat for general administrative matters within 15 days from the date of receipt of this decision.

Marijana Matanovič, Attorney
SECRETARY

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Agenda item 113

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, QUESTIONS RELATING TO REFUGEES, RETURNEES AND DISPLACED PERSONS AND HUMANITARIAN QUESTIONS

Letter dated 12 November 1993 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to forward the following comments in connection with the statement given by the Muslim representative of Bosnia and Herzegovina on 9 November 1993 in the Third Committee under agenda item 113 "Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions" (see A/C.3/48/SR.28).

The Muslim representative of Bosnia and Herzegovina has abused the debate on refugee issues to render unsubstantiated and unfounded allegations against Serbian people and the Federal Republic of Yugoslavia. The Government of the Federal Republic of Yugoslavia finds these allegations outrageous and fully renounces them.

The Muslim representative constantly overlooks that what is happening in Bosnia and Herzegovina is a civil war, a fact which has been recognized by all major international factors, including the United Nations.

The negative role of the Muslim side in Bosnia and Herzegovina in the ongoing civil war is well substantiated by reports of the Special Rapporteur on Human Rights Abuses in the former Yugoslavia. In his report dated 26 August 1993 (S/26383) concerning the situation in Sarajevo, the Special Rapporteur states that "men of all ages and backgrounds have been arrested in the street by members of government forces and forced to do dangerous work, digging trenches on the front line". The Special Rapporteur also emphasized in his report of 18 May 1993 (S/26469, annex) that "Arbitrary executions and torture have been carried out by government forces". On the question of the blocking of humanitarian aid, the Special Rapporteur states in his report of

26 August 1993 that "UNHCR representatives have reason to believe that the population figures given to them by the Government of Bosnia and Herzegovina are inflated, with the result that food which could feed the civilian population is being siphoned off to the black market, or to feed the army. According to UNHCR, up to 20 per cent of its food aid may be diverted in this way".

With regard to humanitarian assistance, both in the statement made by the President of the Security Council on 9 November 1993 (S/26716) in which the Security Council "reiterates its demand to all parties and others concerned to guarantee unimpeded access for humanitarian assistance" as well as in the European Council's latest statement of 29 October 1993 (S/26678) in which the Council "holds the parties to the conflict directly responsible for establishing the conditions essential for any continuation of humanitarian aid ...", it is clear that all parties to the conflict in the former Bosnia and Herzegovina are responsible for safe passage of humanitarian aid. The Muslim representative, however, relentlessly sheds all responsibility of "government forces" for hindering humanitarian aid and maliciously accuses Serbs and the Government of the Federal Republic of Yugoslavia for withholding aid. The Bosnian Serbs have on numerous occasions expressed their readiness to cooperate with the United Nations Protection Force (UNPROFOR) in ensuring, through the territory of the Serb Republic, delivery and safe passage of humanitarian aid to all the population of the former Bosnia and Herzegovina. However, there were a number of instances when that humanitarian aid was, in fact, abused to cover delivery of war matériel to the Bosnian Muslim side.

The Muslim representative, in blaming the Bosnian Serbs and the Federal Republic of Yugoslavia for the civil war in former Bosnia and Herzegovina, is precisely covering up the actions of Bosnian Muslims, who, by refusing to sign the latest peace proposal and to continue negotiations with a view to finding a comprehensive peace solution, are directly responsible for such a situation. The latest statement by the Security Council as well as daily situation reports of UNPROFOR point out that conflicts which exist between Muslims and Croats, as well as Muslims opening fire on humanitarian convoys, are reasons why the humanitarian assistance is not reaching those in need.

The truth about the current situation in former Bosnia and Herzegovina is that a notion of Bosnia and Herzegovina dominated by Muslims has never left the mind of the Muslim leadership of Bosnia and Herzegovina. In order to obtain such a result, nothing seemed to be sacred for the Muslim leadership. Repeated proposals by the Bosnian Serb side to allow free passage of all civilians between various parts of Sarajevo have constantly been denied by the Muslim side. So far Serbian proposals have been heeded only in the Autonomous Province of Western Bosnia of the Republic of Bosnia, which shows that there is room for peaceful cooperation between Serbs and Muslims on the basis of equality and respect for mutual interests.

The Government of the Federal Republic of Yugoslavia has from the very beginning of the civil war in the former Bosnia and Herzegovina directed all its efforts to ending the war and finding a comprehensive peaceful solution. On numerous occasions, the Government of the Federal Republic of Yugoslavia has proposed that its territory be used for the delivery of humanitarian aid to Bosnia and Herzegovina. Following recent discussions and efforts to ensure normal and safe movement of humanitarian aid convoys through the Split-Sarajevo

corridor, the Government of the Federal Republic of Yugoslavia has offered the use of a corridor from its Adriatic port of Bar to Sarajevo for the same purpose. The Minister for Foreign Affairs of the Federal Republic of Yugoslavia, H.E. Mr. V. Jovanovic, in his letter of 29 October 1993, to the Chairman of the Council of Ministers of the European Community, the Minister for Foreign Affairs of Belgium, H.E. Mr. W. Claes, stated, inter alia, that such a corridor is "more convenient since it goes through the territories of the Federal Republic of Yugoslavia and the Serb Republic, where there are no military activities, ensuring unhampered passage of convoys and security of their escorts".

The Federal Republic of Yugoslavia, itself under Draconian and unjustified sanctions, has given shelter to more than 700,000 refugees, of whom 50,000 are Muslim.

Throughout the statement of the Muslim representative the sole purpose that is to be achieved is aimed not at solving the terrible humanitarian situation in former Bosnia and Herzegovina, but to obliterate Serbian people. For its part, the Government of the Federal Republic of Yugoslavia will continue, even in precarious circumstances, to do its utmost, to deliver humanitarian aid to those who are in need, irrespective of their origin, culture, religion or political affiliation, and to give shelter to refugees and displaced persons of the tragic civil war in former Bosnia and Herzegovina.

I should be grateful if you would have the present letter circulated as a document of the General Assembly under agenda item 113.

(Signed) Dragomir DJOKIC
Chargé d'affaires a.i.

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Agenda item 111

ADVANCEMENT OF WOMEN

Letter dated 18 November 1993 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter addressed to you by His Excellency Mr. Osman Ertuğ, Representative of the Turkish Republic of Northern Cyprus.

I should be grateful if the text of the present letter and its annex were circulated as a document of the General Assembly under agenda item 111.

(Signed) İnal BATU
Ambassador
Permanent Representative

Annex

LETTER DATED 17 NOVEMBER 1993 FROM THE REPRESENTATIVE OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to refer to the statement made by the Greek Cypriot delegate at the Third Committee, on 15 November 1993, on agenda item 111 entitled "Advancement of women".

It is not my intention to dwell on the substance of this agenda item, except to say that the Turkish Republic of Northern Cyprus, although prevented from becoming a party to the relevant international conventions for known reasons, nevertheless fully observes and upholds the principles enunciated in all international instruments concerning women, both in law and in practice.

My purpose in writing is to put on record our indignation at the exploitation, by the Greek Cypriot side, of every conceivable occasion for the purpose of generating anti-Turkish propaganda, even on unrelated subjects, such as the advancement of women. It is true that "painful developments ... marred the life of the Republic of Cyprus from its very inception", but this is an understatement even if meant to describe the wilful actions of the Greek Cypriots to destroy the bi-communal Republic and annex the island to Greece. The Greek Cypriot onslaught on the Turkish Cypriot community launched in December 1963, in addition to the casualties it caused in the male population, left hundreds of women and children dead, wounded or missing and thousands of mothers grieving over the tragic loss or disappearance of their loved ones.

Added to the long list of Turkish Cypriot women victims were those who were murdered, en masse, together with their menfolk, in the villages of Murataga, Atlilar, Sandallar and other villages that were attacked by Greek Cypriot armed elements in 1974. It is an insult to their memory and a shame on the officials of a community which has perpetrated these crimes to falsely blame others for the agony of their own women, which in any event was the inevitable consequence of the Greek Cypriot side's own actions.

Today, contrary to what the Greek Cypriot delegate is claiming, the provocative demonstrations staged by Greek Cypriot women at our borders constitute an exploitation of women for political gain and do little to improve relations between the two communities. If the Greek Cypriot community, women and men alike, is genuinely interested in peaceful coexistence with the Turkish Cypriots, they should first of all abandon their hostile attitude towards our people and stop this senseless campaign of slander and defamation.

I should be grateful if this letter were circulated as a document of the General Assembly under agenda item 111.

(Signed) Osman ERTUĞ
Representative
Turkish Republic of Northern Cyprus

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Agenda item 115

SITUATION OF HUMAN RIGHTS IN ESTONIA AND LATVIA

Letter dated 18 November 1993 from the Permanent Representative of the Republic of Latvia to the United Nations addressed to the Secretary-General

I have the honour to transmit the text of a letter dated 25 October 1993 from the Foreign Minister of Latvia addressed to the Foreign Ministers of the States Members of the United Nations on General Assembly agenda item 115 entitled "Situation of human rights in Estonia and Latvia" (see annex). In this connection, I should like to refer you to the "Summary of the report on a fact-finding mission to Latvia",* prepared by the present Assistant Secretary-General for Human Rights, Mr. Ibrahima Fall.

I should be grateful if you would have the text of this letter and its annex circulated as a document of the General Assembly under item 115 of the agenda of the forty-eighth session.

(Signed) Aivars BAUMANIS
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the
Republic of Latvia to the
United Nations

* For the text of this summary, see document A/47/748, annex.

Annex

Letter dated 25 October 1993 from the Foreign Minister of Latvia addressed to the Foreign Ministers of the States Members of the United Nations on General Assembly agenda item 115 entitled "Situation of human rights in Estonia and Latvia"

I have the honour to address you regarding the state of human rights in Latvia. Since the re-establishment of the independence of Latvia in August 1991, following a half-century of occupation by the former Soviet Union, much has been done to restore the rule of law to Latvia and to promote respect for the human rights and fundamental freedoms of all its residents.

In this connection, I should like to refer you to the "Summary of the report on a fact-finding mission to Latvia", prepared by the present United Nations Assistant Secretary-General for Human Rights, Mr. Ibrahima Fall, and endorsed by the Secretary-General of the United Nations, Mr. Boutros Boutros-Ghali. In particular, I should like to quote you one of the report's conclusions, which addresses the situation in Latvia with respect to its Russian-speaking population:

> "The information received and examined by the Mission does not reveal gross and systematic violations of human rights in Latvia. Individual violations which have been reported are limited and not related to discriminatory policy as such and they should and can be remedied at the appropriate level. On the positive side, it should be emphasized that no instances of violence, no mass dismissals from employment, exclusion from educational establishments, evictions from apartments, or expulsions were reported." a/

I have brought the matter of the state of human rights in Latvia to your attention because it is to be addressed during the present session of the General Assembly of the United Nations, under the agenda item entitled "Situation of human rights in Estonia and Latvia". This item was included in the agenda of the General Assembly on a request by the Russian Federation in November 1992, shortly before the release of the United Nations fact-finding mission's report on Latvia.

The necessity for the inclusion of this item in the agenda of the General Assembly was never established and - in any case - the conclusions found in the United Nations fact-finding mission's report on Latvia make the continuation of this item on the agenda unnecessary.

Discontinuation of this agenda item would conform with the conclusion endorsed by the Secretary-General that human rights are not being violated in Latvia.

Moreover, discontinuation of this agenda item would assist the efforts of the General Assembly to rationalize its agenda and allocate its resources towards the solution of actual and concrete problems.

I respectfully request your understanding and support for discontinuation of the above-mentioned agenda item during the present session of the General Assembly of the United Nations.

Notes

a/ A/47/748, annex, para. 23.

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Agenda item 114 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 22 November 1993 from the Permanent Representative of the Sudan to the United Nations addressed to the Secretary-General

Upon instructions from my Government I have the honour to transmit herewith the enclosed document prepared by my Government in response to the interim report on the situation of human rights in the Sudan prepared by Mr. Caspar Biro and contained in document A/48/601.

I would be very glad if the aforementioned document could be circulated as a document of the forty-eighth session of the General Assembly under agenda item 114 (c).

(Signed) Ali M. O. YASSIN
Permanent Representative

Annex

COMMENTS ON THE INTERIM REPORT
ON THE SITUATION OF HUMAN RIGHTS IN THE SUDAN

Note by Sudan Government *

The Permanent Representative of the Sudan to the United Nations has the honour to transmit to the members of the General Assembly the following comments on the interim report on the situation of human rights in the Sudan prepared by Mr. Gaspar Biro, Special Rapporteur of the Commission on Human Rights, in accordance with the Commission's resolution 1993/60 of 10 March 1993 and the Economic and Social Council's decision 1993/272 of 28 July 1993, document No. (A/48/601) dated 18 November 1993.

* Circulated in the language of submission only.

A. Background

The Commission on Human Rights had discussed the situation of human rights in the Sudan, for the first time, at its forty-seventh session in 1991 under the confidential procedures established by the Economic and Social Council resolution 1503 (XLVIII). The discussion was instigated by some allegations levelled against the human rights record of the Sudan Government. During the course of the discussions the Sudan Government explained that those allegations were unfounded, biased and were actually designed to serve the ulterior objectives of the opponents of the Government of the country.

To allow for an objective verification of those allegations the Commission on Human Rights adopted at its forty-eighth session, a confidential decision requesting the Chairman of the Commission to appoint an independent expert (I.E.) for the purpose of establishing direct contacts with the Government and the people of the Sudan in order to report to the forty-ninth session of the Commission on Human Rights on the human rights situation in the Sudan. On May 12, 1992 the Chairman of the Commission on Human Rights appointed Mr. Gaspar Biro as I.E. for the Sudan.

The I.E. visited the Sudan and spent six working days between November 21 and 26 1992 and has described the attitude of the Sudan Government towards his mission, in his report, as follows: "The I.E. must point out from the very beginning that both the Sudanese Mission and the Government of the Sudan have been very cooperative and that the schedule agreed upon with Ambassador Mohammed was fully accomplished."

Before the submission of the report of the I.E. to the forty-ninth session of the Commission on Human Rights and on 2 December 1992 the General Assembly of the United Nations was called upon to address itself on the issue of the human rights situation in the Sudan at the insistence of some circles, which have sworn vengeance on the Government of the Sudan because of the objections of the latter to their dictates in its pursuance of the New International Order or Disorder - whichever way its supporters or opponents choose to look at it.

As a result the General Assembly passed a resolution on the situation of human rights in the Sudan dated 2 December 1992 expressing "its deep concern at the serious human rights violations in the Sudan" and calling upon the Government of the Sudan and the rebel bandits (SPLA) to take certain measures.

Despite the objections of the Government of the Sudan to that resolution, which has pre-empted the mission of the I.E., nevertheless it has respected the will of the international community and took all necessary measures to comply with that resolution. Those measures included the setting up of a judicial

investigation committee and the enhancement of delivery of humanitarian assistance in compliance with operative paragraphs 7 and 8 respectively.

The above-mentioned resolution of the General Assembly coupled with the insistence of some circles to escalate their confrontation with Sudan Government had a drastic impact on the Commission on Human Rights at its forty-ninth session in February 1993. That impact was exemplified by the Commission's neglect of the recommendation of its working group on country situations to extend the mandate of the I.E. as called for by his report: "...he could not dedicate enough time and effort to study the situation of churches and different ethnic and racial minorities and contact directly the individuals concerned". And so the Commission decided, by resolution 1993/60, that the situation of human rights in the Sudan be examined under the public procedures and requested its Chairman to appoint a Special Rapporteur to report his findings to its forty-eighth session and to the Commission on Human Rights at its fiftieth session. On 30 March 1993, the Chairman of the Commission on Human Rights appointed Mr. Gaspar Biro himself as Special Rapporteur. And at its session of 28 July 1993, the Economic and Social Council, by its decision 1993/272, approved the Commission's resolution 1993/60.

The Special Rapporteur addressed a letter dated 29 July 1993 to the Government of the Sudan requesting an official visit to the country and he has received a prompt official invitation by a letter dated 9 August 1993. Such a quick response shows the extent of the respect of the Government of the Sudan to the will of the international community and its readiness to cooperate. The Special Rapporteur visited the Sudan from 11 to 23 September 1993 and his interim incomplete report is now before this forty-eighth session of the General Assembly.

B. Comments on the interim report:

(1) The Report is incomplete - betrayal of the Mandate:

Under the terms of the Commission on the Human Rights' resolution 1993/60 the mandate of the Special Rapporteur covers the human rights abuses committed by all the parties involved in the armed conflict in the country as rightly referred to in paragraph (7) of the interim report, yet the Special Rapporteur, for reasons not clarified in the report chose to undertake two missions: one in September in order to present an interim report to form the basis for the discussions in the Third Committee of the General Assembly of the United Nations, and another mission at the end of the year, in order to prepare a final report, for the discussions of the Commission in February 1994. The Interim report concentrates altogether on the allegations levelled against the Government - in most cases by individuals - because, as in the words of the Special Rapporteur in paragraph (9) of the Interim Report: " the

circumstances of the September Mission were not appropriate for a thorough investigation of reports on violations of human rights by different SPLA factions in Southern Sudan, although several reliable reports and information were already gathered in this respect". The question that comes readily to mind is: why hasn't a more appropriate time been chosen for the undertaking of the Mission to provide the Special Rapporteur with enough time and means to cover the areas controlled by both sides to the conflict, and thoroughly examine the mass of reports and information, already at the disposal of the Special Rapporteur, so as to present a more comprehensive and balanced report, otherwise the resolution which may be adopted will undoubtedly have a negative bearing on the discussions and the decision of the Commission on Human Rights in 1994, no matter what the Final Report will eventually contain or advocate. More ominous still, is the contention of the Special Rapporteur that, though he will go on to address human rights abuses committed by other parties than the Government of the Sudan it is, however clear, "that the Government of the Sudan, claiming sovereignty over the whole territory of the State, is bound to respect the human rights obligations and is to be held responsible should it not abide by these obligations". In other words, the concepts of fairness and objectivity may go overboard, or to take an example, the Government of Bosnia for instance should be held responsible for the crimes committed by the Serbs and Croats against the Muslim population of Bosnia. We are invited by the Special Rapporteur to be guided by this logic in our deliberations of his interim report.

We feel that by the admission of the Special Rapporteur himself this report is not a complete one, and we therefore invite the members of this Committee, out of fairness and justice, not to adopt any resolution with regard to its content simply because it does not reflect a true picture of the complete situation of human rights in the Sudan. If any resolution is adopted at this stage, that resolution would be unfair and would reflect negatively on the proceedings before the Commission early 1994. What is fair is to take note of what is being presented at this stage by the Special Rapporteur and to address the Commission to consider the report in its totality thereby adopting a balanced resolution. Any other resolution condemning one party to the conflict would be unfair and unjust, specially if it is adopted at the level of the General Assembly thereby making it binding on the Commission which is in no position to reverse resolutions adopted at the General Assembly. On the other hand, the General Assembly could adopt any resolution contrary to what the Commission may recommend. This was the situation Sudan faced in the 49th session of the Commission in March this year, which was influenced by the resolution dated 2nd December 1992 passed by the General Assembly which resulted in resolution 1993/60 appointing the Special Rapporteur. We would hope that the Sudan would not find itself again entrapped by a premature resolution of the General Assembly. We appeal to your conscience, honourable members of this Committee, not to subject us

again to this unnecessary dilemma of designed conspiracy where we would find ourselves accused, tried and convicted before the prosecution completes his case let alone giving us the right to defend ourselves.

(2) Full cooperation by the Government

In paragraph (24) of the report, the Special Rapporteur made the following remarks: " the Government of the Sudan cooperated with the Special Rapporteur by arranging the meetings he had requested..." and "... the Government of the Sudan further facilitated visits to the locations the Special Rapporteur wished to see. No objections were raised by the Government of the Sudan against a visit of the SPLA controlled areas in southern Sudan and the Nuba Mountains...".

No doubt that the above attitude reflected by those remarks is a full and unreserved cooperation and assistance to the Special Rapporteur in the discharge of his duties, and that the Government of the Sudan ensured that the Special Rapporteur has free and unlimited access to any person in the Sudan whom he wished to see. The Special Rapporteur could have used the words of resolution 1993/60 to describe the cooperation of the Government of the Sudan which better suits the situation rather than the bare word "cooperated". It seems that the unreserved cooperation extended by the Government of the Sudan has disappointed the Special Rapporteur.

3. SPLA is responsible for atrocities in Nuba Mountains:

The Special Rapporteur seems to have devoted a large section of his interim report (Paragraphs 62-95) to an area known in the Sudan, as the Nuba Mountains which, though located in the geographical center of the country, is in many respects inaccessible, and is more so during the rainy season. This area had been a confluence of communities with "distinctive ethnic, religious, cultural and linguistic features". However, and in spite of these distinctive features, the social conflicts which took place on tribal basis, were the exception, rather than the rule. The harmony which prevailed between the different communities was shattered during the 1980's before the present government assumed power. The reversion to conflict on a wider scale was not due to the introduction and implementation of the Sharia law, as alleged by the Special Rapporteur, but rather to the rivalry between the political parties during the previous regime, abetted and financed by some neighbouring countries which vied for influence in Khartoum. That era gave rise to the armed militia, which paid lip service of allegiance to one party or the other, but soon enough took up to looting and raiding, leading in the end to bloody clashes between various groups. The situation was fast plunging into another civil war, this time in the Western part of the country. When the present government took over, one of its topmost

priorities, was to put an end to this conflict, and it has largely succeeded in doing that had it not been for the fact that the rebel movement (SPLA) had succeeded meanwhile in making a strong incursion in the region in 1985 "when more than 100 citizens were killed in an Arab Baggara inhabited village - Gardud - in the eastern part of the Nuba Mountains". This act of attacking and annihilating an Arab village was deliberately undertaken by the SPLA to fan ethnic hatreds and atrocities. This is an aspect of the conflict in the region, which in our view, the Special Rapporteur failed to outline in its true perspective, and thus helped to blur the role that the SPLA played in the incitement of the wide scale conflict and in the destruction of those parts of the Region which had the misfortune to come under its control. His remarks that "hundreds of thousands of unarmed civilians are now completely exposed and defenseless to all kinds of atrocities committed on the one side by the PDF, the army, and other Government of Sudan agencies, and on the other side by SPLA troops controlling a large part of the Nuba Mountains", and his frequent references to a strong visible military and PDF presence in Government controlled areas, could lead the unwary observe to conclude that:

a. The heavy military presence in Government controlled areas implies that the scale of atrocities and infringement of human rights in these areas is proportionate to such a presence, and this tends to obscure those committed by the SPLA forces, although the latter are alleged to control larger areas.

b. The frequent references to the PDF forces tends to obscure the fact that its members are recruited locally and drawn from all communities without discrimination, and are assigned to defend the hamlets and the local farms against raids by the SPLA, which often do so to obtain food supplies and secure recruits for their dwindling forces. The Special Rapporteur, however, alleges to have gathered evidence - again without specifying its nature and reliability - of gross violations of human rights in the locations he visited which are under government control, and goes on to contend that these cases must be considered as elements of a larger context. The report is deliberately vague on the responsibility for the instances of human rights violations, and placing the blame on the Government and the SPLA does not specifically state the share of responsibility to which each party is held accountable. Hence, the impression that one gets from the report is that the Government is solely responsible.

The Special Rapporteur in his tour of the Dilling-Kadugli area, has done his utmost to find evidence of abuses by the Government and PDF forces, by resorting to the following methods:

I. Failing to elaborate on evidence of attacks and harassment of civilians by the SPLA, and casting doubt on the authenticity and reliability of such organizations as the Peace and Resettlement Administration for Southern Kordofan by referring to

it in paragraph (72) as "the so-called Peace Group", and the information supplied by it regarding the destruction of the social and economic infrastructure in the region, on account of the attacks of the SPLA.

II. In his review of the evidence given by some individuals, including one or two tribal chiefs, he selected those parts of the evidence, which are of doubtful value and tried to place the onus on the Government, basing his conclusions on "several reliable independent sources" which claimed that a specific tribe in this region is "targeted by the Government of Sudan forces because of being suspected of close collaboration with the SPLA". Thus any information coming from the Government side is to be handled with skepticism, while evidence attributed to independent sources is referred to as "reliable" without indicating how he had come to the conclusion that such evidence is reliable.

III. The Report often refers to some movements of population from outlying and insecure areas to some urban centres under Government control, probably to seek security and food; it refers to the return of refugees to the peace villages set up by the Peace and Resettlement Administration and the figure of 167265 is mentioned as the total population of these villages; it also refers to the claim by the SPLA that there is an estimated population of 200000 to 250000 still living in areas under their control in the Nuba Mountains; yet the Special Rapporteur alleges that "if the present process of uprooting of the Nuba communities is not stopped in short time, it might be irreversible". He describes the situation in the Nuba Mountains as "uprooting" without elaborating on his accusation. However, out of a population of one million inhabiting the region, nearly 400,000 continue to live in the peace villages and the area controlled by the SPLA, apart from the population living in the urban centers, such as, Dilling and Kadugli and the displaced camps around them, with the rest drifting further north to El Obeid, the capital of Kordofan state, and the Federal Capital Khartoum. We understand the word "uprooting" to mean ethnic cleansing with the whole population being forcibly removed from their towns and villages - as is the case with the Muslims in Bosnia - but this situation does not apply to the Nuba Mountains, except in the allegations of the opposition groups and the susceptible Western Media. We believe, therefore, that the conclusions drawn up by the Special Rapporteur in this respect, to say the least, are inconclusive and unfortunate.

In his meetings with four Nuba tribal chiefs, the Special Rapporteur was given a full account of the situation in their respective areas, and they seemed to point out to the following facts:

I. The SPLA is "responsible for all atrocities committed and damages caused in Kadugli area in last years", and the chiefs go on to elaborate the atrocities committed and their

locations, such as, "from 176 of their villages at least 73 were empty in September 1993, and some of the rest surrounded or besieged by SPLA troops".

II. The chiefs mentioned in their testimonials, "several cases of killing and tortures of unarmed civilians, men, women and children, rapes, kidnapping and forced military training of children, burning down of houses, looting", lists containing hundreds of names of victims were also provided. The chiefs' testimonials were classified by the Special Rapporteur as allegations, yet in the same breath he refers to a list of 400 names being supplied by what he calls "independence sources" - an obvious reference in his classification - to opponents of the Government. The frequent references to armed civilians bearing arms, or "walking around without any apparent reason" within the context of his narration of attacks on villages, especially those around the front line, the disappearance of civilians from one or two villages, in areas which have been changing hands, can only indicate that the Special Rapporteur had gone into the Nuba Mountains region with set opinions and pre-conceived conclusions. His allegation that he had "carefully studied the information he has assembled in the form of reports, documents, oral and written testimonials, photographs and videotapes" - all this mass of information studied since the end of his visit to the Sudan on September 23rd, must have been quite an achievement. It is interesting to note that he refers to videotapes, amongst the materials he collected. The provision of such sophisticated material in a rural backward area, raises a number of questions about the reliability of his sources of information. Although, the Special Rapporteur notes, by the way, that "serious abuses have been committed by the two SPLA factions. As mentioned before, these abuses will be included in the next report", yet he goes on to "express his serious concern over violations for which the Government of the Sudan bears responsibility". The responsibility of the SPLA and the atrocities committed by its troops in the different theaters of conflict, and the suffering of the civilian population, caught in the midst of an internecine conflict, is pushed to the periphery with the vague promise , that it will be taken into consideration in the final report - which is yet to be investigated and prepared. Meanwhile, the Committee is called upon to discuss the item before it and to adopt a draft resolution, on the basis of an interim report that lacks both adequate information and the elements of impartiality and balance.

(4) Chasing Individual Cases:

The Special Rapporteur, seems to be interested in chasing individual cases based on information whispered to him by his alleged "reliable sources" probably of individuals opposing the Government. He made a trip from Khartoum to Sawakin - on the Red sea - to check on a Sudanese citizen (paragraph 47) who was sent to prison after being sentenced by a court of law on the charge of conspiracy against the government, a trip that cost time and

expense, done to satisfy the urge of the Special Rapporteur to pursue allegations by elements hostile to the government, to condemn it at all costs. And at the end of his reporting on that case he did not tell us why he did not ask to go to Kassal Prison to see that person. However we would like to assure the Special Rapporteur that the allegations made by that person namely retired Colonel Mohamed Ahmed Elrayah, although dating back to 1991 are under judicial investigations and if established whoever is responsible will face trial. The Kamal Mekki Medani and others cases who were convicted for drinking alcohol in a fair trial and who were defended by more than twenty lawyers at Wad Medani and which resulted in the acquittal of 10 accused and the suspension of the sentences of the others pending appeal were described as an unfair trial, simply because three of the accused were brothers of a "reliable source" of the Special Rapporteur.

(5) Displaced and Refugees:

In reviewing the problem of displacement and refuge, he fails to distinguish between displacement and normal migration of population from rural and pastoral regions to the urban areas, thus lumping together displacement and migration, and coming up with the figure of five million persons (or one fifth the population of the whole country). The government departments concerned, would have given, to the Special Rapporteur, a more realistic picture, had he chosen to clarify the matter with them. As for the problem of those who sought refuge in neighbouring countries, the Special Rapporteur quotes two contradictory figures 263000 Sudanese refugees according to the World Refugee Survey 1993, and 500000 according to the Representative of the Secretary General on Internally Displaced Persons. He does not explain why there are two sets of figures, and why he still considers such information reliable and worthy of quoting in his interim report. And as expected he declined to report about the tremendous efforts of the Sudan Government in hosting mass of refugees of different religious and ethnic origin, an effort applauded by the United Nations Specialized Agencies.

(6) Unfounded Allegations:

The respective government departments, have been inundated by letters and memoranda from politically motivated individuals and groups, enquiring about persons, who are allegedly arrested, disappeared, summarily executed ...etc. On investigation, it has been established that some of them are under investigation for normal infringements of criminal laws - and would eventually go before the courts or released, some are free, some have never been under detention, some names are merely fictitious, and some have already been sentenced by courts for crimes committed and for which they were convicted. Those details are expected to reach the Special Rapporteur at any time because they have already been mailed. Sudan is a very vast country and the means of communications are poor. That is why a response was not possible

before he leaves Khartoum. So the delay was not because those allegations are true as may be understood from the references of the Special Rapporteur.

7. Juba Incidents:

The Special Rapporteur seems to concentrate his allegations on the events which took place during the SPLA attack on Juba in June and July 1992. This attack followed an infiltration by SPLA elements in civilian clothes. The infiltrators, using the element of surprise, succeeded in killing a large number of government troops and innocent civilians. Eventually, the garrison regained the initiative and managed, after heavy fighting to drive out the infiltrators. The heavy fighting and the bombardment of the city by the SPLA before the attack, resulted in a lot of civilian casualties. The way the Special Rapporteur refers to these regrettable events overlooks the fact that there was bombardment, heavy fighting, mopping up operations to rid the city of the armed infiltrators, and presented the whole situation as reprisals and killings by the government troops. To reach such a conclusion he must have taken as reliable sources the information supplied by the opposition groups and the SPLA. What is more serious is the frequent reference, in the foreign media and in the respective reports of the Special Rapporteur, of extrajudicial killings of employees of foreign embassies and relief organizations. The employees referred to in this respect were Sudanese nationals, who took advantage of the diplomatic immunity of the premises of these organizations, and the communications equipment available in these premises, to direct the artillery of the SPLA, which was bombarding the city. The employees involved were justly sentenced by court martial, and paid for their treachery. The reference by the Special Rapporteur to this sad event, as extrajudicial killings, is to ignore the fact that there is a constituted government authority in a city, which was then under siege by an enemy, and an act of treachery which led to hundreds of casualties and fatalities, can only be dealt with by a court martial and in accordance with the rules of International Law pertaining to war, which are universally recognized. We are fully aware that the whole issue of human rights violations has been brought before the respective United Nations organs by a country whose embassy's premises have been used in this instance, and which is trying to cover its embarrassment by pretending to be outraged for the execution of its local employees. The fact remains, the embassy premises in question was given diplomatic immunity by the Sudan Government at the request of the U.S. Government, yet the latter chose not to post a diplomatic staff, but handed it to a local employee, who happened to be in collusion with the SPLA, and consequently indulge in an act of war against the Government. We shall not comment or draw conclusions from that set up, and we leave it to the members of the Committee to draw their own.

On the other hand it is worth mentioning that the Sudan

Government had done, with regard to Juba incidents, what it has been called upon to do by the resolution of the General Assembly dated 2 December 1992 that is to say setting up an independent Judicial Investigation Committee. But how do we expect that Committee to finish its job if it is still receiving long lists of allegations (230 names) by the Special Rapporteur as late as his recent visit to Sudan in September 1992 (paragraph 36). The references in that paragraph to the effect that the Chairman of that Committee was unable to provide answers to certain questions are inaccurate because nowhere on earth would such a Committee release information about its findings before it finalizes its report.

8. The Government is protecting Relief Supplies:

The journeys of the supply train carrying relief supplies to Wau from Babanusa and guarded by local Popular Defense Forces and army personnel, is projected in the report as a foray by these forces to kill, loot and destroy - but the Special Rapporteur does not explain why it is necessary for soldiers to walk on each side of the train, an arrangement which is necessary to safeguard the train and its shipment from the incursions of the SPLA forces. The impression that one gets from the way the Special Rapporteur examines these issues, is that the country is in a state of chaos, its armed forces are undisciplined and are given free license to loot and destroy, the government has no control of the situation, and the rebel forces are in no way responsible for the prolongation of the war, or of the genocide committed, and is still being committed, in the fratricidal and brutal warfare being waged by the factions, especially against the civil populations.

The facts of the case are that the Government was doing its best to comply with paragraph 8 of the resolution of the General Assembly dated 2 December 1992 and paragraph 12 of the Commission on Human Rights' resolution 1993/60 which calls upon all parties to permit delivery of humanitarian assistance to the civilian population in need. But instead of commending those efforts and blaming the rebels for blocking the delivery of food, the Special Rapporteur is saying that it would have been more appropriate for the Government to leave the civilian population die of hunger rather than fight the rebels who block the food supplies. That is another clear indication how the Special Rapporteur has lost sight of his mandate.

9. The Mandate is to investigate and not to collect allegations:

The report is actually a collection of allegations rather than an investigation of those allegations as called upon by the mandate of the Special Rapporteur. That wrong methodology shows lack of experience. The following are just few examples of those aspects of the report where the Special Rapporteur:-

1. Did not reflect what took place in his meetings with the 15 high ranking officials of the Sudanese Government whom he met. Neither did he reveal what is the considerable documentary information he received from the Government of the Sudan, and what impact it has on his conclusions.

2. In more that 23 paragraphs of his report had cited a considerable amount of hearsay material that have no evidential value and is contrary to the expectation that he should have attempted to verify and corroborate the information before presenting the same in his report. But it seems that the stockpiling of the allegations to distort the image of Sudan Government is more important than the verification which might wipe out those allegations and deprive the Special Rapporteur of a golden opportunity.

3. Gave various judgements without resort to evidence or substantiation of the judgements he has made. He was not impartial in giving opinions based on the allegations of the Sudanese opposition such as his reporting of the so-called illusionary ghost houses, which is particularly a creation of the Sudanese self-exiled opposition. We find it unfair on part of the Special Rapporteur to mention anything about ghost houses while failing to request a visit to the said ghost houses, when he was able to identify at least one such a ghost house.

10. Lawful Military Operations:

In paragraph 37 of his report the Special Rapporteur made the following remark: "... many reports have been received concerning indiscriminate and deliberate aerial bombardments by Government forces on civilian targets e.g. camps for displaced persons..". Here the Special Rapporteur is putting this statement out of context. Deliberate, yes, but they are not indiscriminate. The aerial bombardments took place but against military targets where heavy weaponry is used by the rebels against civilian population. For the record we would like to place that there are no displaced camps in the SPLA controlled areas. All displaced camps are situated in the Northern part of the Sudan for those fleeing the combat zones. We are troubled here to see the Special Rapporteur using the language of the so-called SPLA, which used to describe their military camps as displaced camps as a camouflage and for purposes of propaganda.

11. Unacceptable Political remarks:

In paragraph 64 the Special Rapporteur makes another suggestive remark: "... since geographically the Nuba Mountains area belong to the North, opinions diverge concerning the political appurtenance of this area, if conflict between the north and the south is considered...". This is a political remark and it is ultra vires the mandate of the Special Rapporteur. Nowhere in the

mandate has the Special Rapporteur been invited to make remarks about the political appurtenance of the Nuba Mountains or even the consideration of the conflict between the north and the south which remains a domestic concern.

Also the Special Rapporteur made another unacceptable suggestion in paragraph 64 that: "... the precedents of recent conflicts started on a greater scale in 1983 when as a consequence of former President Nimeiri's new policy focussing on the implementation of Islamic Sharia Law, local tribal administration was abolished...". Certainly the insurgence in the Nuba Mountains has nothing to do with neither the Sharia Laws nor the abolishment of local tribal administration. The Special Rapporteur had either betrayed his mandate by not allocating the required time to study the history of the region, or he is using the political logic propagated by the rebels (SPLA) in an obvious connivance with the outlaws. The Special Rapporteur needs to clear himself regarding the statements he made on both instances.

12. Contradictory reporting:

Paragraph (74) of the Special Rapporteur's report represents the climax of his contradictions. He made the following remark about the Katla tribe: "... the Chief of Katla tribe said that over the last 4 years, 67 children and women were killed by the rebels and 2,000 tribal people are under camp-arrest in Katla Mountains...". Then driven by his enthusiasm to implicate the Government of Sudan, he immediately jumps to the conclusion that: "... it must be noted that according to several reliable independent sources the Katla tribe is especially targeted by the Government of Sudan forces because of being suspected of close collaboration with the SPLA...". In spite of the several reliable independent sources he maintained, how could the Katla tribe be specifically targeted by Government forces while the Chief of Katla tribe tells the Special Rapporteur in the very paragraph (74) that it is the rebels who killed over the last 4 years, 67 children and women and kept 2,000 tribal people under camp arrest? Within the same context, we would also invite the distinguished delegates to consider the story narrated by the Special Rapporteur about the old man from Shibli in paragraph (75).

13. Incriminating Approach:

During his visit to Angarko camp for displaced persons, the Special Rapporteur explained in paragraph (78) that he did not receive convincing explanations regarding the difference in the number of the displaced persons in the said camp between the figures of UNICEF (3,270) and those of the Government of Sudan. That is not an intelligent query to be raised because the displaced camps in the Sudan are not prisons, they are simply a humble humanitarian residence area prepared by the Government to its citizens who are seeking refuge. The displaced persons are free to

go out of these camps voluntarily whenever they decide. Considerable numbers of the displaced settled in different cities where they can work and earn a living as called for in his report. This paragraph in our view, reveals the incriminating approach of the Special Rapporteur who apparently departed from his original mandate failing to establish a pattern of human rights violations. So instead of commending the Government for guaranteeing freedom of movement he availed himself of the incident to raise doubts in the absence of any allegations to justify such doubts.

14. The testimony of 34 tribal Chiefs disregarded:

In paragraph (81) it is disturbing to note that the Special Rapporteur describes the testimonies given to him by thirty-four tribal Chiefs as allegations. He made the following remark: "... the Chiefs of tribes made the SPLA responsible for all atrocities committed and damages caused in Kadugli in last years, according to their allegations atrocities started here in August 1987...". The use of the word allegations in the above context should be compared to and read with the Rapporteur's use of the same word in connection with the rebels in paragraph (83): "...allegations concerning a wide range of gross violations of human rights and atrocities committed by the SPLA were formulated...".

In fact, had it not been for the bias and lack of experience and professionalism on the part of the Special Rapporteur, he would have realized that the testimony of that large number of reliable eyewitnesses is a very strong evidence in favour of the Government and could have only been rebutted by an equally strong evidence and not be volunteering to refer to it as allegations.

15. Other foreign dignitaries reporting fairly about Sudan:

The Special Rapporteur has ignored the fact that Sudan has received during this year all the officials sent by the United Nations to investigate allegations of human rights violations and relief aid to the needy, such as Mr. Vieri Traxler, the Secretary-General's Representative, the delegation of the European Community's Troika, and some West European leaders such as the Chairman of the Sub-Committee on Human Rights of the Bundestag, the Dutch Minister of Development and International Cooperation, and some British members of the two Houses of Parliament. Sudan has also and within one week of notification accepted Mr. Biro's appointment as Special Rapporteur and cooperated fully with him to fulfil his mission.

For the sake of comparison and to prove that the reporting of the Special Rapporteur about the Sudan is really biased and politically motivated we would refer to the reporting of some of those foreign dignitaries who visited the Sudan during the

same year 1993:

(a) Mr. Jan Pronk, the Dutch Minister of Development and International Cooperation has visited the Sudan during 23-27 October 1993 and his visit covered the displaced persons camps' and the area of Nuba Mountains. The remarks of Mr. Pronk were published in Algemeen Dagblad newspaper. For the sake of comparison we refer to paragraphs 55-61 where the Special Rapporteur has reported that several persons who had tried to contact the United Nations office during his visit or who actually met with him have been questioned and arrested by police and security force. Mr. Pronk is reporting a totally different story: "a United Nations reporter preceded us here some time ago. We disposed of all names of the persons he spoke to. In many countries courage is necessary to speak to such a reporter. Afterwards the security service usually comes along... but we came across a number of persons he spoke to today. That is a good sign.". So we have two contradicting reports, the Special Rapporteur is saying that any person who dared to speak with him is subjected to reprisal by police and security forces while the Dutch Minister is reporting that he himself has met a number of persons who have spoken with UN reporters before and no one of them mentioned anything about reprisals and that is a good sign. So it is crystal clear that one of the two gentlemen is not reporting fairly, to say the least.

(b) According to operative paragraph 4 of resolution 1993/60 the Special Rapporteur is supposed to be reporting about the progress made in Sudan towards the full restoration of human rights and compliance with international human rights instruments and international humanitarian law. But nowhere in the report has the Special Rapporteur mentioned any such progress. On the other hand, Minister Pronk has reported about progress and improvements: "the situation in the Nuba Mountains has improved... we rode southward by car to Kadugli... on the way we visited villages and refugee camps ... there is no hunger... since the beginning of this year (situation of human rights) has improved... the new governor is sincere... there are improvements to speak about... the relief to refugees is good, better than in Khartoum... we came across professional Sudanese aid organizations, Islamic and Christian,with dedicated support. The mortality was better than I expected. There is water and the supply of foodstuff and medicines by the International Aid Organizations is good..." So according to the reporting of the Dutch Minister there are improvements in the field of human rights and humanitarian assistance but what can the Government of Sudan do if the Special Rapporteur is not willing to report those improvements and the progress made despite the fact that the resolution is calling upon the Special Rapporteur to make such reporting.

Furthermore we avail ourselves of this opportunity to report that the Head of State in Sudan has recently, after the

Special Rapporteur left Sudan, promulgated the Constitutional Decree No. 7 enshrining respect of human rights in the constitutional set up of the country.

Not only that but the Revolutionary Command Council has resolved itself and appointed a President of the Republic who would later be democratically elected. All that improvement was elaborated in Constitutional Decrees Nos. 8 and 9, promulgated with the Constitutional Decree No. 7. That was a strong and irreversible move towards democracy.

(c) When the Special Rapporteur refers to SPLA Leaders in his report he equates them with the Government senior officials despite the fact that they are outlaws and bandits and are continuing the fighting for personal and ethnic motives. He went even to the extent of ignoring to report about their atrocities at this stage. But the Dutch Minister is balanced in his reporting: "...I had a meeting with former southern leaders who remain in the town (Khartoum) ... including old Vice President Abel Aler, who I know for twenty years now. There is wisdom among them not the personal and ethnic motives which so dominated the discussions that I had a few months ago with SPLA leaders in the South...".

(d) Among the foreign dignitaries who visited the Sudan recently (4-8 May 1993) is Mr. Frederik Vogel, the Chairman of the Sub-Committee of the Bundestag. He reported that the Government of Sudan has been flexible and responsive to the resolution of the Commission on Human Rights 1993/60. And that the Government of Sudan has justification in criticizing Mr. Gaspar Biro when he went to Sudan last year as an independent expert. In our view, that criticism applies also this time and is two fold. Firstly, that Mr. Biro is relying in his reporting on the allegations received by him instead of verifying those allegation and searching the facts of each case. Secondly Sudan is a vast country and the means of communications are not sophisticated, so if the Government is not able to provide him with information regarding any persons within a short time that situation should not mean that the allegations are true or that the Government is not willing to provide the necessary information. We notice for example that in his interim report he referred to the fact that he has submitted a list of names to the Minister of Justice but has not received any reply during his stay. The remark is true but he did not bother to seek clarifications for the delay. The fact of the case is that the Minister of Justice and all other concerned authorities have been exerting their full efforts to collect the information from remote parts of the country, but were not able to prepare the response before he leaves Khartoum. Now the response is ready after having collected all the necessary information and will be handed over to him at any time. The response proves beyond any reasonable doubt that the allegations are unfounded. That in itself explains why Mr. Vogel is justified in reporting that the criticism of the Government to Mr. Biro is justified. Actually if there are serious

violations of human rights in the Sudan, the Special Rapporteur would not have bothered to report a five hours arrest as he did in paragraph 56. Not only that but even when the Government reports the release of some persons still the Special Rapporteur would say that is not enough and he is still waiting confirmation as he did in paragraph 57.

In fact, whenever it is possible for the Government of the Sudan to take immediate measures to alleviate any injustices even if they are justified, it would not hesitate to do so immediately as it did with regard to the situation of the women's prison in Omduraman, the only move welcomed by the Special Rapporteur as reported in paragraph 50. But no doubt such action is not possible in all cases especially when the action called for is information about hundreds of names.

(e) Mr. Vogel also reported that he has asked for visits to certain places and the Government has complied immediately with his request and that there was no time for the authorities to prepare for such visits and that after he made those visits there was no evidence of the ghost houses referred to in some allegations. As for the Special Rapporteur, he did not mention the sudden visits which he has asked for as did Mr. Vogel. Not only that but he did not even report the positive aspects he discovered during those visits. That shows the Special Rapporteur is looking for evidence to prove the allegations he brought with him and if he does not find such evidence he would not trouble himself with reporting the rebuttal.

(f) With regard to the armed conflict in the Sudan, Mr. Vogel, unlike the Special Rapporteur, reported that it is naive to depict such war as a war between Muslims and Christians, or a war between Arabs and Africans. But when we read through the report of the Special Rapporteur one would definitely reach the conclusion that it is a war between Muslims and Christians and between Arabs and Africans.

(g) Another foreign dignitary who visited the Sudan recently (31 January - 6 February 1993) is Mr. Bernd Kant the Chairman of Missio Organization who was quoted in the report of Mr. Vogel as reporting that he can't say that Christians are not tolerated in the Sudan.

(16) <u>Street Children taken care of:</u>

In section 4 entitled: "Arbitrary arrest and detention, and due process of Law" the Special Rapporteur raised in paragraph 52 a number of questions that remains in his opinion unanswered. The Special Rapporteur should have raised these questions in his meetings during the visit with the Sudanese officials he has met, but not in his report and in a suggestive way. The Government of the Sudan, Ministry of Social Planning treats the issue of street

children with seriousness and with the priority it deserves. Well prepared social plans are prepared and implemented to grant them food, shelter, medical care, education and vocational training and apprenticeship as mandated by the Presidential Decree establishing that Ministry. However, the Special Rapporteur is trying to cast doubts about the reformatory process adopted by the Government of the Sudan, and as usual he quotes allegations and testimonies without indicating their source or considering its evidential value. The suggestions, thus made by the Special Rapporteur in relation to street children, are totally misleading.

Further in section (5) entitled "Reprisals" the Special Rapporteur raised in paragraphs 57, 58 and 59 a number of incidents which deserve our attention. The persons and women said to have been arrested in front of the United Nations office in Khartoum were treated under the applicable Sudanese law prohibiting unlawful assembly. Those persons did not obtain the required permission to assemble and as such the security forces interfered with their demonstration and they were released immediately thereafter. It was also the responsibility of the Government of the Sudan to protect the Special Rapporteur and the United Nations office in Khartoum from any violence. The fact that demonstration was not authorized and unlawful renders it unpeaceful contrary to the conclusions of the Special Rapporteur. Furthermore if the Government of the Sudan had bad intentions against those people it would not have acted in front of the Special Rapporteur.

C. Conclusions

The harm has already been done by such a report because it distorts the image of Sudan Government despite the fact that it has no evidential value and we don't expect the Committee to give it any weight. Still it remains to be said that Sudan, a member of this august body, should not have been victimized by the bias and lack of experience, credibility and professionalism of Mr. Gaspar Biro. We believe that the Commission has lost time and expense in bothering to send him to Sudan to write such a report which he could have easily written from the comfort of his bedroom.

In conclusion and after the above-mentioned fair and detailed analysis of the interim report of the Special Rapporteur we sum up as follows:-

(1) The report is incomplete and is a betrayal of the mandate of the Special Rapporteur in favour of SPLA. It is designed to tempt the General Assembly to take a premature resolution against the Sudan, thereby aborting the normal and objective consideration of the situation of human rights in the Sudan by the Commission on Human Rights at its fiftieth session in early 1994, since the Commission could not decide contrary to the resolutions of the General Assembly even if the final report is favourable to the Sudan Government.

(2) Due regard should be given to the full and unreserved cooperation of the Sudan Government by calling upon the Special Rapporteur to be objective and non-selective and concentrate his efforts on verification not the collection of the allegations, and request him to explain what is meant by the phrase "reliable sources" often quoted in his report.

(3) The atrocities at the Nuba Mountains were caused by the unjustified attacks of the SPLA on the civilian population. And the PDF is composed of those members of the society who opted to take arms to defend the lives and property of their families against those attacks. And that it is the moral and legal duty of the Government to help the PDF in doing so.

(4) The Special Rapporteur should not waste time and effort in chasing individual case of lawful arrest which last in many instances for few hours to satisfy his ulterior motives, and should concentrate on the serious human rights violations , if any.

(5) The Special Rapporteur should not have reported elaborately on Juba incidents during June-July 1992 because those incidents are seized now by an Independent Judicial Committee which has been delayed by the long list of 230 persons submitted by the Special Rapporteur. That Committee is functioning now to comply with the resolution of the General Assembly dated 2 December 1992 and should not be expected to release any information before finalizing its mandate.

(6) The Government should be commended for designating troops to protect the trains delivering relief supplies in compliance with the relevant U.N. resolutions. And SPLA should be condemned for attacking those trains not vice-versa as done by the Special Rapporteur.

(7) The Special Rapporteur should not decline to report in full the information provided by the Government with a brief remark that he has not received confirmation from the so-called "reliable sources". He went to the extent of disregarding the testimony of 34 tribal Chiefs. The reporting should be comprehensive so that the Committee can judge for itself whether the conclusions of the Special Rapporteur are supported by evidence or not.

(8) The reporting of the Special Rapporteur should be compared with the reporting of the foreign dignitaries referred to above so as not to victimize the Sudan by the bias and lack of experience of the Special Rapporteur.